

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the
Implementation of the Suspension of Direct
Access Pursuant to Assembly Bill 1X and
Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING MUNICIPAL DEPARTING LOAD
BILLING AND COLLECTION IMPLEMENTATION**

This ruling addresses further steps for implementation of the billing and collection of the municipal departing load (MDL) cost responsibility surcharge (CRS) in reference to the Workshop Report issued on March 11, 2005. A preliminary draft of the Workshop Report was provided to Workshop participants. The final version of the Workshop Report is being separately served by the Energy Division on all parties to this proceeding. The implementation measures outlined herein are based upon the Workshop Report. Some of the issues discussed in the Workshop Report warrant moving ahead now as directed in this ruling. Other issues require further input or comments from parties before further Commission action is taken, as directed below.

Billing and Collection through Bilateral Agreements

Through a series of decisions, the Commission has directed that designated MDL customers must pay a CRS. In order to implement MDL CRS billing and collection by the IOUs, however, procedures must be established to identify applicable customers of the publicly owned utilities (POUs), together with per-kWh billable usage for calculating customer bills. To the extent that

IOU billing records do not contain necessary data, measures must be devised to bill and collect the CRS from the applicable customers of POUs.

Among the alternatives discussed for billing and collection (at least for the transferred load component), the option for negotiation of voluntary bilateral agreements between POUs and IOUs appeared to garner the most widespread acceptance among Workshop participants.¹ IOUs and POUs disagree on the use of such bilateral agreements with respect to billing and collection of the new load component of MDL.

Parties are directed to proceed with negotiations for bilateral agreements specifying MDL CRS billing and collection arrangements between the IOUs and the POUs. The bilateral agreement should address necessary billing and collection protocols, including those enumerated in the Workshop Report, to comply with the MDL CRS requirements. Although participants are encouraged to negotiate bilateral agreements both for the transferred and new load components of MDL, there appears to be more willingness to reach an agreement for the transferred load component than for the new load component. Some POUs continue to assert that a threshold legal issue still exists as to whether there is any legal method of IOU billing and collection from the new POU customers (absent voluntary POU participation).

Although POUs oppose billing and collection for new MDL, the Commission has already decided the applicability of CRS for new MDL through

¹ Given the potential difficulties with FERC-based involvement in serving as a billing and collection intermediary, such an approach will not be actively pursued at this time

its official decisions.² The workshop process is not a forum to relitigate requirements already adopted by the Commission, but rather, to implement mechanisms for compliance.

The Commission's Energy Division shall schedule negotiation sessions and shall facilitate negotiation discussions to develop mutually acceptable bilateral agreements. The Energy Division shall submit a status report to the ALJ by April 18, 2005, on behalf of the negotiating parties, concerning progress toward completing such bilateral agreements for MDL CRS billing and collection.

The status report shall indicate remaining areas of disagreement, if any, in finalizing a bilateral agreement. Where workshop participants favor alternative provisions or language with respect to the bilateral agreement, the alternative provisions should be set forth in the status report, together with arguments on the merits.

In the event that parties are unable to conclude such negotiations within a reasonable time, the IOUs will be authorized to make new and/or update existing advice letter filings, as appropriate, with the opportunity for opposing interests to be heard through the protest process. The specific advice letter filing procedures, including any additional service requirements and/or extended timeframes for protests and responses, will be defined and set forth in a subsequent ruling.

² Certain questions concerning the applicability of CRS to the new load component of MDL is currently before the commission in the pending Petition to Modify filed by CMUA.

CRS Exemption Amount

Another issue addressed at the workshop involved discussion of measures to finalize the CRS exemption amount for new MDL. In D.04-11-014, the Commission granted a CRS exception cap of up to 150 MW of “new” MDL in the PG&E and SCE territories, available through 2012. The Commission set this cap on an interim basis, and allowed parties “to revisit the size of the cap (but not whether there should be a cap), through workshops or other means as determined by the assigned ALJ, in the billing and collections phase of this proceeding.” (D.04-11-014, p. 14.)

Decision 04-12-059 (on rehearing of D.04-11-014) reduced the interim cap from 150 MW to 80 MW and reiterated that “the amount of the cap is interim in nature and shall be revisited in the billing and collections phase of this proceeding. (D.04-11-014, p. 14.) **We expect that during this phase, the parties will present for our consideration a specific amount for the cap, whether 80 MW or another number, that is fully presented, explained and justified.**” (D.04-12-059, p. 24, emphasis added.)

The workshop agenda directed participants to develop common principles as to how the level of any cap should be determined, and what additional discovery, etc. may be needed. Also, parties were to seek consensus on what category or categories of new load the cap would apply, consistent with the relevant Commission decisions.

The Workshop Report indicates that parties remain in disagreement as to a specific amount for the cap, whether 80 MW or another number. The IOUs maintain that the cap should be zero, while CMUA, suggested that the cap should be 400 MW. In feedback on the draft Workshop Report, SCE noted some discussion at the workshop that due to the lack of significant factual basis for any

number for the cap, perhaps an agreement by the parties that the adopted 80 MW would remain as the cap would be an acceptable outcome.

Questions have also been raised in the CMUA Petition for Modification concerning how to interpret the applicability of new load CRS exemptions. Accordingly, the Commission needs to decide the issues in the CMUA Petition for Modification as the next step toward finalizing any exemptions. Once that decision has been issued, further direction shall be provided with respect to finalizing the exemption amount.

Protocols for administering the first-come, first-served rules for POU's seeking to qualify for authorized CRS exclusions

In D. 03-07-028, the Commission adopted provisions for POU's to qualify for MDL CRS exclusions for "new load" on behalf of their customers. How such exclusions are to be administered, however, was left to the billing and collection implementation phase. At the workshop, representatives of POU's presented a joint proposal for "Allocation of Transferred Load Exceptions From the CRS." (Attachment B of the Workshop Report). As part of this proposal, the Department of Water Resources (DWR) was suggested as an entity to administer the allocation process. Representatives of DWR agreed to confer with DWR management regarding this proposal.

In its comments in response to this ruling, DWR's views are solicited concerning its willingness and ability to administer the allocation process, as proposed.

Interpretation of CRS Exemption Eligibility Requirements

Another issue is how to determine whether a POU is eligible to apply for a CRS exception on behalf of their MDL. D.04-11-014 requires that the POU must have been "providing electricity to retail end-use customers on or before

July 10, 2003, the issuance date of D.03-07-028; and (2) serving 100 or more customers.” (D.04-11-014, OP 13, 2, 11). Parties disagree as to how to interpret this eligibility requirement. SCE’s interpretation is that the POU must be providing electricity to 100 or more customers through distribution facilities owned and operated by the POU as of July 10, 2003. City of Corona’s interpretation would require the POU to be providing electricity to 100 or more customers by a meter owned by the POU by such date.

Under SCE’s interpretation, a POU that was not serving 100 or more customers through its own distribution facilities by July 10, 2003, but was acting as an Energy Service Provider (ESP) for 100 or more Direct Access customers by such date, would not qualify for an MDL CRS exemption. Under Corona’s interpretation, such a POU would qualify for an exemption by acting as an ESP and Meter Service Provider.

In feedback on the workshop report, the City of Corona noted that parties’ discussion of whether particular POUs would qualify for exceptions “highlighted the need for clear definitions, administration by a neutral, disinterested entity, and an appeals process for disputes.”

Parties are authorized to file comments, as directed in the order below, providing argument as to which of these interpretations of CRS exemption eligibility requirements is more supportable and consistent with MDL CRS principles as set forth by the Commission.

Quantification of Total MDL CRS Obligations to Date

Another outstanding issue is the quantification of the MDL CRS obligation to date. In this regard, the Commission issued D.05-01-040 (Opinion Adopting Cost Responsibility Requirements For 2001-2003) at its January 27, 2005 meeting. While adopting “cost responsibility” obligations for the years 2001-2003 for

Direct Access (DA) load, however, there was insufficient data to determine the total obligation for MDL CRS. The Energy Division understands that PG&E may have provided DWR/Navigant with an overall estimate of “departing load”, but not differentiated between customer generation DL and municipal DL. Neither SCE nor SDG&E have provided any MDL data for modeling purposes to DWR/Navigant.

The Commission stated in D.05-01-040 that:

“As the basis for determining CRS obligations attributable to MDL customers, the Commission has issued a series of decisions in this proceeding. . . Since the most recent MDL decisions were issued after the most recent CRS modeling runs had been completed, the effects of these decisions are not incorporated into the modeling results for DL summarized in this decision. Moreover, we directed in D.03-07-028 that a further MDL billing and collection implementation phase must be conducted to determine the applicable MDL customers and usage for computing CRS obligations. Thus, pending further developments in the MDL billing and collection phase, we defer final determination of the CRS obligations applicable to MDL.” (D.05-01-040, pp. 8-9, emphasis added)

The Energy Division suggests a “working group” approach to address remaining MDL CRS quantification issues going forward, instead of the “stand-alone” workshops that have been used for CRS modeling in the past. A working group will provide an ongoing forum for collaborative efforts by interested parties to calculate and finalize the applicable MDL CRS obligations. Under the working group approach, the Energy Division would welcome participation by DWR/Navigant—as an equal partner with other members of the group, rather than as the lead entity that performs calculations under the group’s direction.

Pursuant to this ruling, the Energy Division is authorized to move forward with establishing the working group, as it has described, to produce the

calculations required for the Commission to adopt the MDL CRS obligations to date. The Energy Division shall serve as a central clearinghouse for MDL CRS data collection and modeling calculations. As an initial step, specific load data to perform the MDL CRS calculations needs to be provided. As a preliminary task for the working group, outstanding data requirements need to be determined, and responsibility needs to be established as to who is to provide what data, with deadlines for doing so. As noted above, some of the questions as to which categories of load are subject to specific charges, and the effective date of those obligations may still need to be clarified by the Commission in connection with the CMUA Petition to Modify.

As a basis for the cost inputs to be used in the calculation of total MDL CRS obligations to date, the Power Charge/CTC accrual amounts for DA load shown below were adopted by the Commission in D.05-01-040, for the periods 2001-2003. Parties should comment on the applicability of these unit values (in \$/MWH) for use in the MDL CRS calculations as well, as summarized below.

Direct Access Cost Responsibility (in \$/MWH)

	PG&E Territory	SCE Territory	SDG&E Territory
2001	19.00	23.54	10.10
2002	24.65	27.59	26.69
2003	21.93	27.62	21.40

Issues Relating to a Cents Per kWh Cap on MDL CRS

In D.02-11-022, the Commission imposed a cap of 2.7 cents/kWh applicable to Direct Access CRS obligations. In D.03-07-028, the Commission deferred consideration of whether or to what extent to impose a similar cap on the CRS for MDL. (Conclusion of Law 14).

In feedback on the draft Workshop Report, South San Joaquin Irrigation District noted that the general consensus from the POU community was that the need for a cap will depend on the size of the overall charge. The DWR representative stated his opinion that the CRS for MDL customers should work out to be less than the current 2.7 cent/kwh charge for Direct Access.

In view of these comments, the question of whether some per-kWh dollar cap is warranted for MDL customer billings will be deferred until the overall CRS amount for MDL is calculated pursuant to the Working Group process outlined above.

IT IS RULED that:

1. The Commission's Energy Division is authorized to proceed immediately with scheduling and coordination of negotiation sessions among the representatives of the IOUs and POUs for the purpose of developing a mutually agreeable bilateral agreement for MDL CRS billing and collection, either for transferred load only, or, if possible, also for the new load component.
2. The Energy Division shall provide a status report to the ALJ by April 18, 2005 on the progress of negotiations towards completing bilateral agreements for the MDL CRS billing and collection phase.
3. Depending on the results of the status report, a further ruling will be made, either towards finalizing bilateral agreements and/or authorizing the IOUs to file new and/or revised advice letters, as appropriate, on the basis explained above.
4. The Energy Division is authorized to move forward with establishing a Working Group, as described above, for finalizing calculations relating to the MDL CRS obligations to date. The Energy Division shall serve as the central clearinghouse for MDL CRS data collection and modeling calculations.

5. A status report shall be due on April 18, 2005 concerning progress of the Working Group toward finalizing the MDL CRS obligations to date.

6. Parties may file general comments concerning any other pertinent issues identified in the Workshop Report, served by the Energy Division on all parties to this proceeding. Opening comments shall be due on April 15, 2005, and reply comments on April 29, 2005.

7. As part of their comments, parties shall address which interpretation of CRS exemption eligibility requirements put forward by SCE versus by the City of Corona is more supportable and consistent with MDL CRS principles as set forth by the Commission.

8. As part of the comments from DWR, its views are solicited concerning the joint proposal for "Allocation of Transferred Load Exceptions From the CRS" as set forth in Attachment B of the Workshop Report, and as to the willingness and availability of DWR to serve as the entity to administer the allocation process.

Dated March 28, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Municipal Departing Load Billing and Collection Implementation on all parties of record in this proceeding or their attorneys of record.

Dated March 28, 2005, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

N O T I C E

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